

## IN THE UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF NEW YORK

DAVID ALLEN and ASHLEE ALLEN,  
Individually and as Guardians ad Litem  
For XAVIER ALLEN, an infant,

CV 07 2661

Plaintiffs,

ANSWER

v.

TRIAL BY JURY  
DEMANDED

ROBERT'S AMERICAN GOURMET  
FOOD, INC., a domestic corporation,

Defendant.

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PLEASE TAKE NOTICE, that defendant ROBERT'S AMERICAN GOURMET FOOD, INC., by and through its attorneys, COZEN O'CONNOR hereby answers the plaintiffs' complaint as follows:

1.1 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1.1" of the Complaint.

1.2 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1.2" of the Complaint.

1.3 Defendant admits the allegations contained in paragraph "1.3" of the Complaint.

2.1 Defendant denies the allegations contained in paragraph "2.1" of the Complaint.

2.2 Defendant denies the allegations contained in paragraph "2.2" of the Complaint.

3.1 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "3.1" of the Complaint.

3.2 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “3.2” of the Complaint.

3.3 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “3.3” of the Complaint.

3.4 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “3.4” of the Complaint.

3.5 Defendant denies the allegations contained in paragraph “3.5” of the Complaint.

3.6 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “3.6” of the Complaint.

3.7 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “3.7” of the Complaint.

3.8 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “3.8” of the Complaint.

3.9 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “3.9” of the Complaint.

3.10 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “3.10” of the Complaint.

3.11 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “3.11” of the Complaint.

4.1 Defendant repeats and reiterates each and every response to paragraphs “1.1” through “3.11” of the Complaint as if set forth more fully at length herein.

4.2 Defendant denies the allegations contained in paragraph “4.2” of the Complaint.

4.3 Defendant denies the allegations contained in paragraph “4.3” of the Complaint.

4.4 Defendant denies the allegations contained in paragraph “4.4” of the Complaint.

4.5 Defendant denies the allegations contained in paragraph “4.5” of the Complaint.

4.6 Defendant denies the allegations contained in paragraph “4.6” of the Complaint.

4.7 Defendant denies the allegations contained in paragraph “4.7” of the Complaint.

4.8 Defendant repeats and reiterates each and every response to paragraphs “1.1” through “4.7” of the Complaint as if set forth more fully at length herein.

4.9 Defendant denies the allegations contained in paragraph “4.9” of the Complaint.

4.10 Defendant denies the allegations contained in paragraph “4.10” of the Complaint.

4.11 Defendant denies the allegations contained in paragraph “4.11” of the Complaint.

4.12 Defendant denies the allegations contained in paragraph “4.12” of the Complaint.

4.13 Defendant repeats and reiterates each and every response to paragraphs “1.1” through “4.12” of the Complaint as if set forth more fully at length herein.

4.14 Defendant denies the allegations contained in paragraph “4.14” of the Complaint.

4.15 Defendant denies the allegations contained in paragraph “4.15” of the Complaint.

4.16 Defendant denies the allegations contained in paragraph “4.16” of the Complaint.

4.17 Defendant denies the allegations contained in paragraph “4.17” of the Complaint.

4.18 Defendant denies the allegations contained in paragraph “4.18” of the Complaint.

4.19 Defendant repeats and reiterates each and every response to paragraphs “1.1” through “4.18” of the Complaint as if set forth more fully at length herein.

4.20 Defendant denies the allegations contained in paragraph “4.20” of the Complaint.

4.21 Defendant denies the allegations contained in paragraph “4.21” of the Complaint.

4.22 Defendant denies the allegations contained in paragraph “4.22” of the Complaint.

5.1 Defendant denies the allegations contained in paragraph “5.1” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

Plaintiffs have failed to state a cause of action upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

This action should not proceed in the absence of various entities who should be parties.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

If, in fact, plaintiffs sustained injuries or damages as alleged in the Verified Complaint, which damages and injuries are hereby expressly denied, said injuries and damages occurred as a result of the plaintiffs' own culpable conduct.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

If, in fact, plaintiffs sustained damages as alleged in the Verified Complaint, such damages were caused, in whole or in part, by the comparative negligence of the plaintiffs and such damages, which are hereby denied, should be diminished and reduced in the proportion to which the comparative negligence attributable to the plaintiffs bear upon the culpability, if any, of all parties.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

If plaintiffs did sustain any injuries as alleged in the Verified Complaint, which this defendant specifically denies, said injuries were proximately caused in whole or in part, or were contributed to by reason of the acts, wrongs, omissions, negligence, want of care, culpable conduct and/or product(s) of some other entity(ies), its (their) agent(s), servant(s) or employee(s), over whom this defendant had no control and for whose conduct and/or product(s) this defendant are/were not responsible or liable, and not because of any of this defendant's acts, wrongs, omissions, carelessness, negligence, want of care, or culpable conduct.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

That in the event that any judgment or verdict is rendered in favor of the plaintiffs, this answering defendant is entitled to have such judgment or verdict reduced by the amount of any collateral payments made to the plaintiffs for expenses and by the amount of all such payments plaintiffs will receive in the future.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' recovery should be barred or reduced by virtue of the adult plaintiffs' having knowingly, voluntarily and unreasonably assumed the risk of physical injury to the infant-plaintiff by not seeking immediate and/or proper medical attention.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

If plaintiffs did sustain any injuries as alleged in the Verified Complaint, which this defendant specifically denies, said injuries were directly and proximately caused by independent, intervening and/or superseding causes which this defendant could not have reasonably foreseen and for which this defendant is (was) not responsible or liable.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

At all times relevant herein, this defendant exercised reasonable care, acted in accordance with or exceeded all applicable Municipal, City, State and Federal statutory, regulatory and common law requirements, regulations, codes and standards.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

If this answering defendant is found to be liable, then its liability is 50% or less of the total liability of all persons liable and by reason thereof, this answering defendant's liability as to non-economic loss, if any, shall not exceed this defendant's equitable share thereof.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

The injuries alleged in the plaintiffs' Verified Complaint were not caused by the negligence, carelessness and/or culpable conduct of this answering defendant, nor were the injuries proximately caused as a result of any acts or omissions of said defendant.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are precluded by the state of the art defense.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

The incident, the injuries, and the damages complained of were caused by the unauthorized, unintended, improper and/or negligent use or abuse of the product and plaintiffs' failure to exercise reasonable and ordinary care, caution or vigilance.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

Defendants made no warranties to plaintiffs.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

To the extent warranties apply, defendant breached no warranties.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

To the extent warranties apply, the incident and all injuries and damages complained of occurred after all applicable warranties expired.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

The product complained of was designed and manufactured in compliance with all applicable design and manufacturing specifications.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs damages were the result of a preexisting condition and are unrelated to any conduct of defendants.

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE**

Defendant alleges that the plaintiffs received remuneration and/or compensation for some or all of the claimed economic loss and this answering defendant is entitled to have

plaintiffs' award, if any, reduced by the amount of that remuneration and/or compensation pursuant to §4545(c) of the C.P.L.R.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

This action is barred by the applicable statute of limitations.

**AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE**

If this answering defendant is found to be liable, the full protections of C.P.L.R. Article 14 regarding contribution are hereby invoked.

**AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE**

Answering defendant relies on and is entitled to all benefits and rights under Article 16 of the New York C.P.L.R.

**AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' alleged damages are the result of idiosyncratic conditions and are unrelated to any conduct of this answering defendant.

**AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' knowingly and voluntarily assumed all risks associated with the activities in which they were engaged.

**AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' failed to mitigate their damages.

**AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE**

This Honorable Court lacks personal jurisdiction over defendant.



**AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable doctrines of Laches, unclean hands, waiver and estoppel.

**AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' injuries, symptoms or problems, if any, are the result of genetic, environmental and/or sociological factors over which defendant had no control and had no duty to control.

**AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE**

All defenses which have been or will be asserted by other future potential defendants and/or Third-Party defendants in this action are adopted and incorporated by reference as if fully set forth at length herein as defenses to plaintiffs' Verified Complaint. In addition, this answering defendant will rely upon any and all other further defenses which become available or appear during discovery proceedings in this action and hereby specifically reserves the right to amend this Answer for the purposes of asserting any such additional affirmative defenses.

**AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE**

This action is barred in whole or in part because no privity exists between plaintiffs and defendant.

**AS AND FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE**

The product was substantially altered, modified and/or changed, after it left the control of the defendants.

WHEREFORE, the defendant demands judgment dismissing the plaintiff's Verified

Complaint herein, together with fees, costs and disbursements in this action.

Dated: New York, New York  
August 23, 2007

Respectfully submitted,

COZEN O'CONNOR

By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27th day of August, 2007, a true and correct copy of the foregoing Answer has been sent via U.S. mail upon:

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